UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE C FINK FAMILY TRUST BY ITS TRUSTEE ZALMEN LANDAU,

Plaintiff,

-v-

AMERICAN GENERAL LIFE INSURANCE COMPANY,

Defendant.

10 Civ. 9230 (JSR)

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

On November 4, 2010, plaintiff The C Fink Family Trust ("Trust"), by its trustee Zalmen Landau, filed a Summons and "Complaint for Declaratory Judgment" against defendant American General Life Insurance Co. ("American General") in the Supreme Court of the State of New York, County of New York, Index No. 114460/10 (the "New York Action"). The Complaint alleges that the Trust is the owner of an American General life insurance policy ("Policy") insuring the life of Chaim Fink, and that American General canceled the Policy on July 15, 2010 for non-payment of premiums despite the fact that the Trust paid the required premiums. Compl. ¶¶ 3, 9, 10. Accordingly, the Trust seeks a declaration that the Policy is in full force and effect. Id. ¶ 16.

On December 9, 2010 American General removed the New York Action to this Court. It is undisputed that subject matter jurisdiction exists because of the complete diversity of citizenship of the parties. On February 10, 2011 American

General filed a motion to dismiss the case pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Plaintiff filed opposition papers on March 11, 2011; defendant filed reply papers on March 23, 2011; and the Court heard oral argument on March 30, 2011. After careful consideration, the Court issued an Order granting defendant's motion in its entirety on April 1, 2011. This Memorandum Order explains the reasons for the Court's decision and directs the entry of final judgment.

Although the parties have presented the Court with sharply divergent accounts of many of the facts, the following facts are uncontested in their essentials. In April 2008, Chaim Fink, Zalmen Landau, and American General's agent Israel Biller completed an application for an $8M American General life insurance policy; the Policy would insure the life of Chaim Fink and would be owned by The C. Fink Family Trust. Memorandum of Law in Support of American General Life Insurance Company's Motion to Dismiss ("Def. Mem.") at 1. American General issued the Policy to the Trust on May 22, 2008. Id. at 2. Approximately two years later, American General became convinced that Fink, Landau, and Biller had made fraudulent representations to American General concerning Fink's net worth and the reasons for which the Policy was sought, and therefore filed suit on May 21, 2010 against Fink, the Trust, Landau, Biller and John Doe

defendants in the Superior Court of New Jersey, Ocean County (Docket No. L-1954-10) (the "New Jersey Action") seeking to formally declare the Policy void ab initio. It is clear that American General subsequently experienced difficulty in serving the defendants, although the parties vigorously dispute the cause of those difficulties. In any event, it is uncontested that the New Jersey Action is ongoing.

American General argues that this Court should dismiss this case in favor of the New Jersey action either under the abstention doctrine or, in the alternative, pursuant to the so-called "first-to-file" rule. As an initial matter, the Court finds that the principles of abstention provide the proper analytical framework for a federal court to apply when faced with a pending state court action. As stated in Radioactive, J.V. v. Manson, "[t]he first-to-file doctrine applies to concurrent federal litigation -- not concurrent state/federal litigation." 153 F. Supp. 2d 462, 473 (S.D.N.Y. 2001). Accordingly, the fact that the New Jersey Action was filed many months before the instant proceeding is not alone dispositive in this case.

However, the Declaratory Judgment Act, which governs the question at hand,[1] grants the Court broad discretion to dismiss

[1] See Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950) ("The operation of the Declaratory Judgment Act is procedural only.") (citations omitted); Quality King Distributors, Inc. v. KMS Research, Inc., 946 F. Supp. 233, 236

plaintiff's complaint for declaratory judgment in favor of the New Jersey Action. The Declaratory Judgment Act provides that "any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a) (emphasis supplied). See also Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 494 (1942) ("Although the District Court had jurisdiction of the suit under the Federal Declaratory Judgments Act, it was under no compulsion to exercise that jurisdiction."). Indeed, the Supreme Court has made clear that "ordinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties." Id. at 495. The Supreme Court reaffirmed and clarified these principles in Wilton v. Seven Falls Co., 515 U.S. 277 (1995):

> Brillhart makes clear that district courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites.

(E.D.N.Y. 1996) (finding that removed action was "governed by federal rather than state law because the Declaratory Judgment Act addresses procedural as opposed to substantive rights"); Haagen-Dazs Shoppe Co. v. Born, 897 F. Supp. 122, 126 & n.2 (S.D.N.Y. 1995) ("Because the Declaratory Judgment Act is procedural, Wilton and Brillhart apply with full force in this removal action premised on diversity of citizenship.") (footnote omitted).

> Although Brillhart did not set out an exclusive list of factors governing the district court's exercise of this discretion, it did provide some useful guidance in that regard. The Court indicated, for example, that in deciding whether to enter a stay, a district court should examine "the scope of the pending state court proceeding and the nature of defenses open there." Ibid. This inquiry, in turn, entails consideration of "whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such parties are amenable to process in that proceeding, etc." Ibid. Other cases, the Court noted, might shed light on additional factors governing a district court's decision to stay or to dismiss a declaratory judgment action at the outset. See ibid. But Brillhart indicated that, at least where another suit involving the same parties and presenting opportunity for ventilation of the same state law issues is pending in state court, a district court might be indulging in "gratuitous interference," ibid., if it permitted the federal declaratory action to proceed.

Id. at 282-83.

In this case, it is clear that the instant controversy would be better resolved in the New Jersey Action. The claims pending before the New Jersey State Court involve the very same Policy that the plaintiff in this case asks the Court to declare in "full force and effect." However, given American General's claim in the New Jersey Action that the Policy should be declared void ab initio, it is clear that adjudicating the validity of the Policy will likely require the presence of at least the following parties: American General, the Trust, Chaim Fink, Israel Biller, and potential John Doe defendants who will be identified through discovery. All of those parties are currently involved in the New Jersey Action, and the New Jersey Court will therefore be

able to fully resolve all disputes concerning the Policy's validity. By contrast, only the Trust and American General are currently parties to the instant suit, which is confined to the limited issue of plaintiff's payment of premiums. Accordingly, "there is nothing that [plaintiff] can hope to achieve in this action that it could not attempt to gain in the [New Jersey] Action. On the other hand, because of the limited nature of this action, . . . there is reason to question whether [American General] could in this case vindicate all of the interests it is pursuing in the [New Jersey] Action." North American Airlines, Inc. v. Int'l Bhd. Of Teamsters, No. 04 Civ. 9949(KMK), 2005 WL 646350, at *21 (S.D.N.Y. Mar. 21, 2005).[2] Additionally, even if the relevant parties were eventually joined and American General filed an appropriate counterclaim against the Trust, the result would only be duplicative, piecemeal litigation that would squander the limited resources of both this Court and the New Jersey state court.

Dismissal is also appropriate in this case because a declaratory judgment would improperly encroach upon the domain of the New Jersey state court. As American General points out,

[2] See also Van Wagner Enters., LLC v. Brown, 367 F. Supp. 2d 530, 531 (S.D.N.Y. 2005) ("Both VW Enterprises and Brown agree that the additional claims and defenses that Brown wishes to bring in this case are already pending in the State Action, that the parties whom Brown seeks to join in the instant action have already been joined in the State Action, and that the two cases

courts routinely dismiss insurance disputes because such cases are governed by state law and are therefore especially appropriate for resolution before the state court. See, e.g., Travelers Indem. Co. v. Philips Elec. N Am. Corp., No. 02 Civ. 9800(WHP), 2004 WL 193564, at *2 (S.D.N.Y. 2004) ("district courts routinely invoke the doctrine of abstention in insurance coverage actions, which necessarily turn on issues of state law"); Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Warrantech Corp., No. 00 Civ. 5007(NRB), 2001 WL 194903 (S.D.N.Y. Feb. 27, 2001) (dismissing case in part because it involved issues of state law); Reliance Ins. Co. of Illinois v. Multi-Fin. Sec. Corp., No. 94 Civ. 6971(SS), 1996 WL 61763, at *3 (S.D.N.Y. Feb. 13, 1996) ("Tipping heavily in favor of abstention in this case . . . is the fact that state law will govern the outcome of this action.").

Finally, American General argues that, "as master of its complaint and the entity whose rights have been placed at risk by Defendants' (including the Trust's) fraudulent scheme perpetrated in New Jersey, [it] was entitled to pursue relief in New Jersey and invoke the protections afforded by New Jersey law under these circumstances. The Trust should not be permitted to end-run American General's choice of forum." Def. Mem. at 12. The Court agrees. Moreover, it is certainly relevant that the New Jersey

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arise from a common nucleus of operative facts.").

Action was filed months before plaintiff filed his complaint in this case.

In response to these arguments, plaintiff contends that the principles of Wilton and Brillhart should not apply in this case because American General chose to remove the action to federal court. See Memorandum of Law in Opposition to Defendant's Motion to Dismiss ("Pl. Mem.") at 7. This argument is without merit. It is undisputed that this action was properly removed to federal court pursuant to the Court's diversity jurisdiction. Now that the case is in federal court, the Declaratory Judgment Act applies. See Haagen-Dazs Shoppe Co. v. Born, 897 F. Supp. 122, 126 & n.2 (S.D.N.Y. 1995) ("Because the Declaratory Judgment Act is procedural, Wilton and Brillhart apply with full force in this removal action premised on diversity of citizenship."). Plaintiff also argues that "[i]f this Court chooses to abstain from exercising jurisdiction over this matter, . . . the Fink Trust submits that the appropriate procedure would be to remand the action to the Supreme Court of New York." Pl. Mem. at 8. However, the cases plaintiff cites in support of this proposition, Jacobs v. District Director of Internal Revenue, Borough of Manhattan, City of New York, 217 F. Supp. 104, 106 (S.D.N.Y. 1963), and In re Application of Thomas & Agnes Carvel Found., 36 F. Supp. 2d 144 (S.D.N.Y. 1999), both involved motions

to remand in situations where no parallel state-court proceedings were pending elsewhere (i.e., in other states). The remainder of plaintiff's arguments are directed towards the first-to-file rule, and are in any event unpersuasive.

For the foregoing reasons, the Court hereby affirms its decision to dismiss this action. The Clerk of the Court is directed to enter final judgment.

SO ORDERED.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
April 9, 2011